

**JUDICIAL COUNCIL OF CALIFORNIA
ADMINISTRATIVE OFFICE OF THE COURTS**

455 Golden Gate Avenue
San Francisco, California 94102-3688

Report

TO: Members of the Judicial Council

FROM: Civil and Small Claims Advisory Committee
Hon. Elihu M. Berle, Chair
Criminal Law Advisory Committee
Hon. Steven Z. Perren, Chair
Family and Juvenile Law Advisory Committee
Hon. Mary Ann Grilli and Hon. Michael Nash, Co-Chairs
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DATE: October 2, 2003

SUBJECT: *Emergency Protective Order* (revise and renumber form 1295.90 as
form EPO-001) (Action Required)

Issue Statement

Emergency Protective Order, a form that is used by law enforcement to secure immediate court orders to protect adults and children at risk of abuse or other harm, needs to be revised. This Judicial Council form does not reflect current state law relating to the ownership and possession of firearms by restrained persons.

Recommendation

The Civil and Small Claims, the Criminal Law, and the Family and Juvenile Law Advisory Committees recommend that the Judicial Council, effective January 1, 2004, revise the *Emergency Protective Order* to conform to current law and renumber it as form EPO-001.

A copy of form EPO-001 is attached at page 5-6.

Rationale for Recommendations

The *Emergency Protective Order* form is used by law enforcement to secure immediate court orders to protect adults and children at risk of harm or abuse. It implements the law authorizing emergency protective orders in cases involving domestic violence, child abuse, elder and dependent adult abuse, and stalking (in civil harassment and workplace violence cases).

Firearms Provisions

The *Emergency Protection Order* form contains warnings to persons subject to the order about purchasing firearms. Specifically, it currently states on the reverse side: "Violation of this order is a misdemeanor punishable by a \$1,000 fine, one year in jail, or both, or may be punishable as a felony. Penal Code section 12021(g) prohibits any person subject to a restraining order from purchasing or attempting to purchase or otherwise obtain a firearm. . . ."

The prohibition on firearms is broader than the statement on the form indicates. Penal Code section 12021(g)(3) provides that the Judicial Council shall provide notice on all protective orders that "the respondent is prohibited from *owning, possessing, purchasing, receiving, or attempting to purchase or receive* a firearm while the protective order is in effect. . . ." (emphasis added). Under existing law, the prohibition on owning, possessing, purchasing, or receiving firearms applies to persons who know they are subject to orders under section 6218 of the Family Code, section 136.2 of the Penal Code, and sections 527.6 and 527.8 of the Code of Civil Procedure. (Penal Code, § 12021(g)(1)–(2).) Hence, the warning on the reverse side of the *Emergency Protective Order* should be revised to be broader and consistent with the provisions of the Penal Code and other applicable law.

Also, the situation with protective orders in elder and dependent adult abuse cases has recently changed. Senate Bill 226 enacted this year and signed by the Governor on September 24, 2003, extends the firearm prohibition to these cases. (See amended Penal Code, § 12021(g)(1)–(2).) This legislation becomes effective January 1, 2004. Hence, the exception in the firearms relinquishment notice on the current form for elder and dependent adult cases needs to be removed.

In sum, to implement existing and recently enacted laws, the warning at the top of the reverse side of the *Emergency Protective Order* form should be revised to state: "Persons subject to a protective order are prohibited from owning, possessing, purchasing, receiving, or attempting to purchase or receive a firearm (Penal Code section 12021(g))." The exception for elder abuse cases should be eliminated.

Other Revisions

1. Court location

The instructions on the reverse side of the current form directs the protected person to seek a longer-term restraining order at the court listed on the first page of the order. However, there is no item number given for the court location paragraph. The proposal would add an item number 13 for the court location paragraph to make it more prominent. Subsequent items are renumbered accordingly.

2. Highlight location of important notices

The current form contains a notice at the bottom of the first page to alert the restrained person and others to important notices on the reverse side. This notice would be moved to a more prominent location, just beside the large “Emergency Protective Order” heading above item 9.

3. Change “protective” to “restraining” where appropriate

The form references the availability of longer-term orders. These orders are more accurately called “restraining orders” instead of “protective orders.” The proposal changes the references where appropriate.

4. Delete references to the “opening” of the civil court

In various places, the form directs the protected person to seek a longer-term restraining order from the court “when it opens.” However, the protective order can be issued any time of day. Therefore, the text “when it opens,” as it refers to the court, would be deleted and replaced by “from the court.”

5. Criminal protective order takes precedence

According to Penal Code section 136.2(h)(2), “[i]n those cases in which a complaint, information, or indictment charging a crime of domestic violence, as defined in Section 13700, has been issued, a restraining order or protective order against the defendant issued by the criminal court in that case has precedence in enforcement over any civil court order against the defendant.” The form would be revised to indicate on the reverse side that a “protective order issued in a criminal case on form CR-160 or MC-220 takes precedence in enforcement over any conflicting civil court order.”

6. Change of designation of form

The *Emergency Protective Order* form was previously designated as Judicial council form 1295.90. The designation has been changed to form EP-001 to make the form easier to identify and locate.

Alternative Actions Considered

Because the *Emergency Protective Order* needs to be revised to be consistent with current law, no alternatives to revising it were considered.

Comments From Interested Parties

A total of 22 comments were received on the proposal to revise the form.¹ The commentators included a commissioner, court executive officers, a police officer, a field representative with the California Department of Justice, and professionals involved in the area of domestic violence prevention. Eleven commentators supported the revisions with no specific comment. One said only, “Looks great!” The other commentators generally supported the revisions, but had specific suggestions for revisions. The committees accepted most of these changes, as indicated in the attached chart.

Implementation Requirements and Costs

Some implementation efforts and costs will be incurred in copying and distributing the revised form. But as the form is similar to the current two-page form, these should not be significant. Because it is important that law enforcement use a form that accurately reflects current law, this form should be revised.

Attachment

¹ A chart summarizing the comments and the committee's responses is attached at pages 7–12.

APPLICATION FOR EMERGENCY PROTECTIVE ORDER (CLETS)

EPO-001

(Name): _____ has provided the information in items 1-5.

LAW ENFORCEMENT CASE NUMBER:

1. PERSON(S) TO BE PROTECTED (*insert names of all persons to be protected by this order*): _____2. PERSON TO BE RESTRAINED (*name*): _____Sex: ☐ M ☐ F Ht.: _____ Wt.: _____ Hair color: _____ Eye color: _____ Race: _____ Age: _____ Date of birth: _____3. The events that cause the protected person to fear immediate and present danger of domestic violence, child abuse, child abduction, elder or dependent adult abuse (other than **solely** financial abuse), or stalking (including workplace violence or civil harassment) are (*give facts and dates; specify weapons*): _____4. ☐ The person to be protected lives with the person to be restrained and requests an order that the restrained person move out immediately from the address in item 9.5. a. ☐ The person to be protected has minor children in common with the person to be restrained, and a temporary custody order is requested because of the facts alleged in item 3. A custody order ☐ does ☐ does not exist.b. ☐ The person to be protected is a minor child in immediate danger of being abducted by the person to be restrained because of the facts alleged in item 3.6. ☐ A child welfare worker or probation officer has advised the undersigned that a juvenile court petition ☐ has already been filed. ☐ will be filed. ☐ will NOT be filed.7. ☐ Adult Protective Services has been notified.8. Phone call to (*name of judicial officer*): _____ on (*date*): _____ at (*time*): _____☐ The judicial officer granted the **Emergency Protective Order** that follows.

By: _____

(PRINT NAME OF LAW ENFORCEMENT OFFICER)

(SIGNATURE OF LAW ENFORCEMENT OFFICER)

Agency: _____

Telephone No.: _____ Badge No.: _____

EMERGENCY PROTECTIVE ORDER (*See reverse for important notices*)9. **To restrained person** (*name*): _____a. ☐ You must not contact, molest, harass, attack, strike, threaten, sexually assault, batter, telephone, send any messages to, follow, stalk, destroy any personal property, or disturb the peace of each person named in item 1.b. ☐ You must ☐ stay away at least _____ yards from each person named in item 1.
☐ stay away at least _____ yards from ☐ move out immediately from(*address*): _____10. ☐ (*Name*): _____ is given temporary care and control of the following minor children of the parties (*names and ages*): _____

11. Reasonable grounds for the issuance of this order exist and an emergency protective order is necessary to prevent the occurrence or recurrence of domestic violence, child abuse, child abduction, elder or dependent adult abuse, or stalking (including workplace violence or civil harassment).

12. **THIS EMERGENCY PROTECTIVE ORDER WILL EXPIRE AT 5:00 P.M. ON:** _____13. **To protected person:** If you need protection for a longer period of time, you must request restraining orders at (*court name and address*): _____

INSERT DATE OF FIFTH COURT DAY OR SEVENTH CALENDAR DAY, WHICHEVER IS EARLIER; DO NOT COUNT DAY THE ORDER IS GRANTED

PROOF OF SERVICE14. Person served (*name*): _____15. I personally delivered copies to the person served as follows: _____ Date: _____ Time: _____
Address: _____16. At the time of service I was at least 18 years of age and not a party to this cause. ☐ I am a California sheriff or marshal.17. My name, address, and telephone number are (*this does not have to be server's home telephone number or address*): _____

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: _____

(TYPE OR PRINT NAME OF SERVER)

(SIGNATURE OF SERVER)

EMERGENCY PROTECTIVE ORDER WARNINGS AND INFORMATION

VIOLATION OF THIS ORDER IS A MISDEMEANOR PUNISHABLE BY A \$1,000 FINE, ONE YEAR IN JAIL, OR BOTH, OR MAY BE PUNISHABLE AS A FELONY. PERSONS SUBJECT TO A RESTRAINING ORDER ARE PROHIBITED FROM OWNING, POSSESSING, PURCHASING, RECEIVING, OR ATTEMPTING TO PURCHASE OR RECEIVE A FIREARM (PENAL CODE SECTION 12021(g)). SUCH CONDUCT IS SUBJECT TO A \$1,000 FINE AND IMPRISONMENT OR BOTH. THIS ORDER SHALL BE ENFORCED BY ALL LAW ENFORCEMENT OFFICERS IN THE STATE OF CALIFORNIA WHO ARE AWARE OF OR SHOWN A COPY OF THE ORDER. UNDER PENAL CODE SECTION 13710(b), "THE TERMS AND CONDITIONS OF THE PROTECTION ORDER REMAIN ENFORCEABLE, NOTWITHSTANDING THE ACTS OF THE PARTIES, AND MAY BE CHANGED ONLY BY ORDER OF THE COURT."

To the restrained person: This order will last until the date and time in item 12 on the reverse. The protected person may, however, obtain a more permanent restraining order from the court. You may seek the advice of an attorney as to any matter connected with this order. The attorney should be consulted promptly so that the attorney may assist you in responding to the order.

A la persona bajo restricción judicial: Esta orden durará hasta la fecha y hora indicadas en el punto 12 al dorso. La persona protegida puede, sin embargo, obtener una Orden de entredicho (restricción judicial) más permanente de la corte. Usted puede consultar a un abogado en conexión con cualquier asunto relacionado con esta orden. Debe consultar al abogado sin pérdida de tiempo para que él o ella le pueda ayudar a responder a la orden.

To the protected person: This order will last only until the date and time noted in item 12 on the reverse. If you wish to seek continuing protection, you will have to apply for an order from the court at the address in item 13, or you should apply to the court in the county where you live if it is a different county and the violence is likely to occur there. You may apply for a protective order free of charge. In the case of an endangered child, you may also apply for a more permanent order at the address in item 13, or if there is a juvenile dependency action pending you may apply for a more permanent order under section 213.5 of the Welfare and Institutions Code. In the case of a child being abducted, you may apply for a *Child Custody Order* from the court at the address in item 13. You may seek the advice of an attorney as to any matter connected with your application for any future court orders. The attorney should be consulted promptly so that the attorney may assist you in making your application. You do not have to have an attorney to get the protective order.

A la persona protegida: Esta orden durará sólo hasta la fecha y hora indicadas en el punto 12 al dorso. Si usted desea que la protección continúe, tendrá que solicitar una orden de la corte en la dirección indicada en el artículo 13, o tendrá que hacer la solicitud ante la corte del condado donde usted vive, si se trata de un condado diferente y es probable que la violencia ocurra allí. La solicitud de la orden de protección es gratis. En el caso de que un niño o una niña se encuentre en peligro, puede solicitar una orden más permanente en la dirección indicada en el artículo 13 o, si hay una acción legal pendiente de tutela juvenil, puede solicitar una orden más permanente conforme a la sección 213.5 del código titulado en inglés **Welfare and Institutions Code**. En el caso del secuestro de un niño o una niña, usted puede solicitar de la corte una Orden para la guarda del niño o de la niña (*Child Custody Order*), en la dirección indicada en el artículo 13 de este formulario. Puede consultar a un abogado en conexión con cualquier asunto relacionado con las solicitudes de órdenes de la corte que usted presente en el futuro. Debe consultar un abogado sin pérdida de tiempo para que él o ella le pueda ayudar a presentar su solicitud. Para obtener la orden de protección no es necesario que un abogado le represente.

To law enforcement: Penal Code section 13710(c) provides that, upon request, law enforcement shall serve the party to be restrained at the scene of a domestic violence incident or at any time the restrained party is in custody. The officer who requested the emergency protective order, while on duty, shall carry copies of the order. The emergency protective order shall be served upon the restrained party by the officer, if the restrained party can reasonably be located, and a copy shall be given to the protected party. A copy also shall be filed with the court as soon as practicable after issuance. The availability of an emergency protective order shall not be affected by the fact that the endangered person has vacated the household to avoid abuse. A law enforcement officer shall use every reasonable means to enforce an emergency protective order issued pursuant to this subdivision. A law enforcement officer acting pursuant to this subdivision shall not be held civilly or criminally liable if he or she has acted in good faith with regard thereto.

If a child is in danger of being abducted: This order will last only until the date and time noted in item 12 on the reverse. You may apply for a child custody order from the court.

En el caso de peligro de secuestro de un niño o de una niña: Esta orden será válida sólo hasta la hora y fecha indicadas en el punto 12 al dorso. Usted puede solicitar de la corte una Orden para la guarda del niño o de la niña (*Child Custody Order*).

This emergency protective order is effective when made. This order shall expire not later than the close of judicial business on the fifth day of judicial business or the seventh calendar day following the day of its issue. A protective order issued in a criminal case on form CR-160 or MC-220 takes precedence in enforcement over any conflicting civil court order.

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Emergency Protective Order (revise form EPO-001 (formerly 1295.90))

	Commentator	Position	Comment on behalf of group?	Comment	Committees' Response
1.	Mr. Steve Allen Center for Community Solutions	A	N	No specific comment.	No response required.
2.	Saul Bercovitch State Bar of California San Francisco, California	A	Y	No specific comment.	No response required.
3.	Evy Leviege Braggs Domestic Violence Case Manager Superior Court of California, County of Alameda	A	N	No specific comment.	No response required.
4.	Hon. Kathleen Bryan Commissioner Superior Court of California, County of San Bernardino	A	N	No specific comment.	No response required.
5.	Ms. Cynthia A. Carbajal Central Files Supervisor Superior Court of California, County of Orange	AM	N	<p>1. The firearms provision should also include the surrendering of a firearm.</p> <p>2. Firearm provision should apply to all. Elder/Dependant Adult should not be excluded. If the firearm prohibitions do not automatically apply how or where will it be noted on the EPO form? We suggest an additional area that reads: "Elder/Dependent Adult Abuse and place a check box next to this option.</p>	<p>1. The revised form contains the notices prescribed by Penal Code section 12021(g).</p> <p>2. The Elder Abuse Prevention statutes did not previously contain any firearms prohibitions. Therefore, the Emergency Protective Order forms have not. However, SB 226 extends the firearms relinquishment provisions to elder abuse protective orders effective January 1, 2004. Hence, the warning on the reverse side of the form has been revised to conform to the statute.</p>
6.	Mr. Robert Gerard President	A	Y		No response required.

Positions: A = Agree; AM = Agree only if modified; N = Do not agree.

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Emergency Protective Order (revise form EPO-001 (formerly 1295.90))

	Commentator	Position	Comment on behalf of group?	Comment	Committees' Response
	Orange County Bar Association				
7.	Ms. Keri Griffith Superior Court of California, County of Ventura	AM	N	No specific comment.	No response required.
8.	Karen Houle Supervising Superior Court Clerk Superior Court of California, County of Kern	A	N		No response required.
9.	Ms. Leslie Knight Supervising Attorney UCD Family Protection Clinic	A	N	Restraining orders obtained through the court are generally not permanent. Item 13 should read: "If you need protection for a longer period of time, you must request more permanent restraining orders at..."	The committees concluded that the word "permanent" should be deleted so that the line reads "If you need protection for a longer period of time, you must request restraining orders at..."
10.	Ken Kresse Executive Director California Center for Law and the Deaf		Y	Revised Emergency Protective Order, Form 1295.90, should include an accommodations notice in the section entitled "Emergency Protective Order Warnings and Information."	A working group is presently developing an accommodations notice that can be used or served with all appropriate forms.
11.	Cristina Llop Director, Access Superior Court of California, City and County of San Francisco	A	N	I believe the reverse of form would benefit from some plain English translation as well as Spanish. Also terms in Spanish used for "restraining order" and "custody" are not commonly used and I don't believe they'll be understood. Various changes to Spanish text, such as "custodia" instead of "guarda".	The committees will consider plain language revisions at a later date, so that the public has an opportunity to review and comment on the proposed text. The translations, thought not in plain language, do track the English. If the committees decided to revise the reverse of the form into plain language, the translated text will also be revised.
12.	Detective Louis #110	A	N	<u>Item 13</u> : Sometimes the protected person has more	The existing text is required pursuant to

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Emergency Protective Order (revise form EPO-001 (formerly 1295.90))

	Commentator	Position	Comment on behalf of group?	Comment	Committees' Response
	Berkeley Police Department Berkeley, California			than one location where they could obtain a restraining order. The language that they “must” request this order at a specific court may be confusing.	Family Code section 6253. A change would require a statutory revision.
13.	Stephen Love Court Executive Officer Superior Court of California, City and County of San Diego	A	N	<p>1. At the bottom of the page 1 and 2, change “1295.90” to “EPO-1”.</p> <p>2. At the bottom of the page 1, change “§6240” to “§6200”.</p> <p>3. In the warning on the reverse regarding “If a child is in danger of being abducted”: Change reference to “item 12 on the reverse.”</p>	<p>1. Agreed generally. It has been modified to read “EPO-001.”</p> <p>2. Agreed.</p> <p>3. Agreed; however, to the addition of a new item 12. then item will be item 13..</p>
14.	Ms. Tricia McCoy Supervising Clerk - Juvenile Division Superior Court of California, County of Kern	A	N	No specific comment.	No response required.
15.	Laraine Noel Court Services Supervisor Superior Court of California, County of Trinity	A	N	No specific comment.	No response required.
16.	Summer Peard Court Services Assistant/Clerk Superior Court of California, County of Tehama	A	N	No specific comment.	No response required.
17.	Catherine Portillo Volunteer Attorney	AM	Y	Reverse side, last paragraph: The phrase “in a criminal case” should be added to the last sentence so	Agreed to revise text . It will read: “A protective order issued in a criminal case on

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Emergency Protective Order (revise form EPO-001 (formerly 1295.90))

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	Harriett Buhai Center			<p>that it reads: "A criminal protective order, issued in a criminal case on form CR-160, takes precedence in enforcement over any other conflicting court order."</p> <p>This modification will emphasize that there is a distinction between an emergency protective order (not issued in a criminal case) and criminal protective order (issued in a criminal case). Our purpose is to prevent confusion by self-represented litigants who may not understand the difference between the two orders, and may believe that an emergency protective order obtained with the assistance of a law enforcement officer is a criminal protective order.</p>	form CR-160 or MC-220 takes precedence in enforcement over any conflicting civil order."
18.	Amber J. Price Judicial Assistant II Superior Court of California, County of Napa	A	N	No specific comment.	No response required.
19.	Liza Siebel Staff Attorney Break the Cycle	A	N	Looks great!	No response required.
20.	Ms. Molly Sugarman Paralegal Placer County Family Court Facilitator	A	N	No specific comment.	No response required.
21.	Valerie Fercho-Tillery, Manager and Peggy Kelly, Field Representative, California Department of Justice	AM	N	<p>1. <u>Item 13</u>: Do not change protective to restraining. "Permanent" orders can be injunctions, restraining orders, or protective orders. No need to change this language.</p> <p>2. <u>Warnings and Information</u>: Add a reference Penal</p>	<p>1. Disagreed, but deleted "permanent."</p> <p>2. Agreed. The reference will be useful.</p>

Positions: A = Agree; AM = Agree only if modified; N = Do not agree.

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Emergency Protective Order (revise form EPO-001 (formerly 1295.90))

	Commentator	Position	Comment on behalf of group?	Comment	Committees' Response
				<p>Code Section 12021(g) to the firearm restriction clause. This was in the previous revision. Law enforcement appreciates references to sections of law that apply to the circumstance(s) of the provisions to be forced.</p> <p>3. The statement “from owning or possessing a firearm” has been added to the back of the EPO; however, no instructions have been added to tell the restrained person what to do with the firearm. If the restrained person must turn the weapon(s) over to law enforcement or sell the weapon(s), or give the guns to someone for safe keeping, instructions should be provided. If a form should be filled out and filed with the court, that too should be stated.</p> <p>4. <u>The reference to criminal protective orders:</u> Our concern is the use of “...form CR-160...”in the language. There are many CPO’s in existence on the older revisions of this form. Some courts even created their own versions. Those too (we believe) would take precedence over any other “civil” order. We are also concerned about the language “...over any other court order.” If there are two CPO’s issued on different dates with conflicting terms, law enforcement and the restrained and protected parties, need to be advised exactly which order is enforced, and what types orders take precedence (civil, juvenile, etc.).</p> <p>5. Please provide instructions on what to do if</p>	<p>3. There is currently no room on the form for such instructions.</p> <p>4. The proposed text restates the instruction given on form CR-160 that is derived from Penal Code section 136.2(h)(2). The committees agreed to modify the statement so that the last line reads “A protective order issued in a criminal case on form CR-160 or MC-220 takes precedence in enforcement over any conflicting civil court order.”</p>

Positions: A = Agree; AM = Agree only if modified; N = Do not agree.

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Emergency Protective Order (revise form EPO-001 (formerly 1295.90))

	Commentator	Position	Comment on behalf of group?	Comment	Committees' Response
				conflicting civil orders are encountered.	5. There is not enough space on the form to describe all of the different ways orders can conflict and protocols for responding to such conflicts.
22.	Caryn Willett Supervisor, Domestic Violence/Stalking and Elder Abuse Unit San Joaquin County District Attorney's Office		N	Recently, I have had many complaints from law enforcement and victims with the language of the EPO, item 9 b - box with move out order. Unfortunately, some individuals are interpreting this as being allowed to go back to the residence and pack up their belongings. Would the Judicial Council take into consideration eliminating that entire wording? The 100 yard or more stay away will cover the fact that the restrained person should not be anywhere near the residence.	The current wording reflects the statutory scheme, which distinguishes between stay away and move out orders.

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